8-5-76

THE DIRECTOR OF CENTRAL INTELLIGENCE

Pete -

I'd appreciate any help you can give us on this -

Sincerely,

Cy

OLC 76-2125

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

23 AUG 1976

Honorable Peter W. Rodino, Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to offer the views of the Central Intelligence Agency on the lobbying legislation pending before your Committee.

As you know, on 15 June 1976 the Senate passed S. 2477, the "Lobbying Disclosure Act of 1976." Section 3(g)(4) of S. 2477 specifically provides that the terms "lobbying communication" and "lobbying solicitation" do not include "a communication or solicitation made by an officer or employee of the Executive branch, acting in his official capacity...." We believe it is important that the House include such an express exemption for Executive branch officials in its lobbying legislation.

We would also like to direct the Committee's attention to a problem posed by Section 3(e)(3) of S. 2477. This provision originated as a floor amendment and provides that the term "lobbying communication" means:

> "... a communication with the Executive branch urging or requesting any officer or employee of the Executive branch to act or not to act, or to act in a certain manner, concerning--
>
> (A) any contract to which the Federal Government is or may become a party...,
>
> where such contract ... involves an obligation incurred by the Federal Government of $1,000,000 or more."

This language is ambiguous but is potentially very broad, and when taken together with Section 3(a)(2), it could jeopardize the security of sensitive intelligence projects.

Section 3(a)(2) defines a "lobbyist" as an organization which engages on its own behalf in 12 or more "oral lobbying communications" in any quarterly period, acting through its own paid employees. Thus, Section 3(e)(3) could be construed to cover contacts, even after a contract has been awarded, between a contracting agency and a contractor on matters relating to performance of the contract.

This potentially broad coverage is of special concern to the Central Intelligence Agency because in furtherance of its foreign intelligence mission and pursuant to the authorities granted in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-j), the Agency enters into contracts for such things as the development of technical collection systems. Frequently, the subject matter of Agency contracts must be protected from public disclosure and, in some cases, the very fact that a particular contract exists is itself extremely sensitive information. However, under Section 3(e)(3), it is possible that, if employees of a contractor, who has already been awarded a contract, have 12 or more discussions with Agency officers which could be construed as "urging or requesting" the officers "to act or not to act, or to act in a certain manner concerning the contract," the contractor could be deemed a "lobbyist" and therefore be required to file public reports on its discussions. Such disclosure could compromise sensitive intelligence sources and methods which the Director of Central Intelligence is obliged to protect from disclosure under Section 102(d)(3) of the National Security Act of 1947.

The problem discussed above could be avoided if lobbying reporting requirements were not extended to cover the relationships between a contracting agency and a contractor after a contract has been awarded.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ George Bush

George Bush
Director

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ROUTING AND RECORD SHEET

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SUBJECT: (Optional)

FROM:	EXTENSION	NO.
Legislative Counsel 7D35 HQ	6136	DATE

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. DDCI	7 Aug	8/4		Attached for the Director's signature is our unsolicited report on lobbying legislation now pending before the House Judiciary Committee. The major problem is the Kennedy floor amendment, inserted in the Senate lobbying legislation, which is very broad and could possibly lead to the disclosure of some of our contract relationships. This report has been coordinated with OGC.
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George L. Cary
Legislative Counsel

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